

Michigan Medicaid Long Term Care Task Force

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****DRAFT MINUTES****

Monday, April 11, 2005

**Senate Hearing Room, Boji Tower
Lansing, Michigan**

Members Present: D. Hoyle, M. Moers, M. Hardy, T. Wong, Representative Shaffer, S. Steinke, R. Chaney, Senator Cherry, Y. McKinney, J. Mendez, J. Sutton, R. Carter, G. Betters, T. Czerwinski, R. Alcodray-Khalifa, M. Cody, J. Olszewski, and M. Udow.

Other: Kirsten Fisk for Representative Gillard, Patrice Eller for M. Udow, Amy Zaagman for Senator Hammerstrom, and Amy Slonim, Michigan Public Health Institute, facilitator.

Call to Order: The twelfth meeting of the Medicaid Long Term Care Task Force was called to order at approximately 10:02 a.m. by chairperson R. Chaney.

Review and Approval of Agenda: A motion to approve the agenda as presented was made by S. Steinke, seconded by R. Alcodray-Khalifa. The agenda was approved by voice vote.

Review and Approval of March 14 Minutes: A motion to approve the March 14 minutes was made by M. Moers, seconded by D. Hoyle. A voice vote approved the minutes as written.

Chairperson R. Chaney asked the Task Force to put any concerns that they have in the form of a suggestion and where it would go in the report and what language would be used. Need to get real specific at this point to strengthen the report. The Executive Committee will be meeting this week to work on any remaining issues. This meeting will probably take place by conference call.

Discussion & Adoption: Workgroup B (Finance) Report: J. Christensen briefed on comments that the workgroup received after the report was introduced. A number of comments (d-f) were technical corrections to the report. Those will be included in the final report if acceptable to the Task Force. There was a suggested rewrite under "A" comments to the Task Force that it is recommended a new principle that assures that non-Medicaid resources currently available to the state continually be used to offer LTC services and supports for Medicaid and non-Medicaid eligible individuals. This principle should reflect the need to maximize the availability and flexibility of all funding sources and providing access to LTC services and supports for residence in the state. "G" of the comments document indicates that some of the participants of the subgroup suggested that the specific recommendations made for revenues is increased including raising taxes.

Further discussion by workgroup members identified the need to recognize additional resources for LTC services are needed and this should be acknowledged. However, it was the feeling of the group as they looked at the suggestions that it is the responsibilities of legislative and executive branches in terms specific nature of how you raise revenues. There was recommendation in the finance committee that seemed to have support in the executive branch, which was to decouple Michigan estate taxes from the rollback in the federal estate taxes. The real issue is that the Governor, Executive branch, and the legislative branch need to recognize that the services and supports that are outlined and identified in the fulfillment of the recommendation of this report will cost Michigan money and it is a good investment for Michigan to make on behalf of the elderly and disabled citizens who need these supports. There were some recommendations under "H" that there was some concern that with the multiple advocacy avenues that the workgroup was promoting and thinking that were necessary and appropriate are the ombudsman, PNA, and the new advocates that would be of assistance to the SPE and the clients served by them. That should be organized on some type of principle. When the workgroup looked at this suggestion that may well be and might be something that the Task Force may want to consider it was not considered in workgroup A or in workgroup B. The workgroup B recognized that the external advocacy function was identified as essential component of the SPE and was supported. Supporting it was as far as workgroup B could take it. It would need to be put on to the list of things to do more work on.

S. Steinke made a motion to focus on funding an ombudsman like or P&A like structure in the way that the SPE recommended, the financing workgroup of B, and put on the list of further issues for consideration possible funding down the line for advocates that someone picks externally from those systems. S. Steinke recommendation is to go systemic. M. Cody seconded the motion. M. Cody indicated that they haven't had a discussion about either the quality recommendation from workgroup G or the consumer advocate recommendation. They have time scheduled for that issue later on. R. Chaney indicated that the motion be tabled until workgroup G report. D. Hoyle moved. R. Chaney clarified for the Task Force that the motion is to resolve the confusion and issue around establishment and funding of external advocacy in one centralized place plus additional advocacy that an individual might choose.

J. Christensen indicated under letter "I" in terms of suggestions there was some comment that was received that the examples of alternate funding mechanisms that were including in the minority opinions in support of alternatives be taken out. Workgroup B recommended that be left in because there was strong feeling in the finance workgroup that those were particular areas that people wanted to look at in the future. Workgroup B made the initial recommendation towards case-mix reimbursement then there was anticipation there would be some follow review and study in managed care options or hybrid options and that was included in workgroup B recommendation. The workgroup wanted to leave that in the report because those are areas that needed expiration and study. There might be other options that might come up and be looked at as a follow on to case-mix reimbursement. J. Christensen made a motion to approve the report in concept.

D. Hoyle asked that the suggestion for case-mix and managed care be moved to the “to do list”. Don’t want to ignore looking at those further.

S. Steinke made motion to move recommendation 3 to be considered after the conversation on M. Cody’s report, which is the recommendation on external advocacy. J. Mendez seconded the motion. A voice vote approved.

A motion to adopt the rest of the recommendation was made by D. Hoyle, seconded by R. Carter. A voice vote approved the recommendations of workgroup B.

Discussion: Reconciled E and G recommendations for LTC and LTC

administration: M. Cody and D. Hoyle met to reconcile the recommendations. They have included revisions to section 6 of workgroup G. D. Hoyle indicated that an agreement easy because they have the similar ideas. The form is a little different but not the substance. Doesn’t see as an enormous change. J. Mendez questioned section 4, item # 3 in relation to the representative from the state LTC ombudsman program. Asked if that person should be serving as a resource instead of an ex-officio. Didn’t understand the reasoning behind this because when the workgroup met this wasn’t discussed. M. Cody indicated that the general thinking was to make sure that person was included and invited to the meetings of the LTC commission and had a seat at the table but not a voting seat. The idea of limiting the ex-officio members was to not overwhelm the LTC commission. Wanted to achieve the balance between who is required to be there as an ex-officio member and make sure that there aren’t too many state officials, but requiring the LTC ombudsman to be there, not sure if they are wedded to any distribution between ex-officio and resource members. J. Mendez indicated that there are two different categories under #3; make it one-way or the other. Office on Aging and medical services staff should be ex-officio. D. Hoyle indicated combining two different reports may have not even have talked about this issue. J. Mendez indicated that in discussion in workgroup E where it was discussed that the Department of Community Health and the Department of Human Services would like them to be ex-officio and everyone else was a resource. J. Mendez indicated that she preferred it this way. J. Mendez made a motion for the state LTC ombudsman to serve as a resource to the commission and not as an excision member. D. Hoyle supports the motion for purposes of discussion. R. Alcodray-Khalifa asked the pros and cons of the resource and ex-officio. S. Steinke indicated that if you are a resource person then you might not have the opportunity to speak at the table at the time of discussion. One of the reasons that workgroup G looked at putting them at ex-officio was to provide that kind of balance because you may have two different sides of any particular issue that would have state government officials taking one side for whatever reason and the state LTC ombudsman or P&A protected by different statues and being allowed to present an alternate side of that conversation and when you are at the table as an ex-officio member your have more of an entitlement to do that. The reason that OSA and MSA were left off and put as resources was because it was felt that it was getting to top heavy with state government officials. There were 3 votes in favor of the motion. There were 8 opposing the motion. The opposed votes were greater so it stays in as an ex-officio membership.

Patrice Eller asked if there was a target date for getting the commission set up. D. Hoyle indicated because it involves legislation the group didn't feel that they could set a time. It is up to a different body. M. Cody indicated that it could be amended to include in the final report for recommendation of a time frame. M. Moers indicated that a commission date should be priority. M. Cody indicated that the reason for no time frame for the LTC commission was because the workgroup put it as part in parcel of the entire act that is being recommended. The final report could suggest to the Governor an interim steps for example, executive order creating the LTC commission with anticipation of legislation that looks something like that by executive order creating the LTC administration. D. Hoyle suggested that they look at this issue when they look at the whole picture. R. Chaney suggested when they get to the benchmarks.

Amy Zaagman with Senator Hammerstom's office indicated that the Senator had concerns with #5 of section 4, regarding any commission receiving compensation. Establishing of a commission would have to be done legislatively and she has concerns about the duties and powers being giving to the commission and some of the legislative delegation being involved there. She doesn't object to the establishment of the commission but does have concern of the cost issues. M. Cody responded by saying that they picked up language from D. Hoyle's report that talks about commissioners receiving a stipend if not otherwise compensated. So that they stipend would only go to consumers or direct care workers who would not be paid for the time off to go attend commission duties. The rest of the people on the commission would not receive anything. A motion to reconcile the two reports was made by D. Hoyle, seconded by M. Hardy. T. Czerwinski had concerned that establishing this commission could slow things down. D. Hoyle called the question about the order on floor to adopt the revision. A voice vote approved the reconciliation of the language between workgroup E and G of the establishment of the commission. Senator Cherry abstained from the motion.

Discussion: Follow-up on Workgroup G eligibility recommendations from last meeting: M. Cody presented responses to 4 recommendations that the Task Force asked for more information.

Recommendation #1: This recommendation was to allow nursing home residents to use the patient pay amounts to maintain homes in the community, which is a provision of federal law and that it is done in the state of Washington. M. Cody contacted the state of Washington and their response was that they have no data on the use of this particular provision, however they believe that it is working well to allow people to return home from the nursing homes. The provision would allow a person who has been in a nursing home for six months or less to divert the patient pay amount to pay for their utilities, mortgage, rent, etc so that they actually have a home in the community. The Task Force asked for financial data, which there were two reports included in the packet given to the members. Steve Bachleda presented a range of possible costs. A motion to adopt recommendation #1 was made by S. Steinke, seconded by S. Gire. A voice vote approved the motion. J. Mendez and R. Carter abstained the motion. J. Olszewski asked if there could be a friendly amendment to the motion indicating that when

we implement it we manage it so that it is used for the intent. S. Steinke agreed. D. Hoyle added when managing it well, where that is in the regulations or by the people who are responsible, but not even try to accept where this an SPE in place. That would allow you to both pilot and have assured management. S. Steinke agreed with J. Olszewski. A voice vote approved the motion. R. Carter and G. Better abstained.

Recommendation #2: Spend down for the MiChoice Program. The state submit a new type of waiver that would allow spend down for enable individuals to participate in the MiChoice Program. If you are over income for the MiChoice Program you cannot spend down to become financially eligible for the program. A general concern was about people who are applying for Home Help services. They are able to spend down to become eligible for the Home Help program. The administrative mechanisms are already in place. This recommendation was voted and approved in March. This discussion is just a follow-up from questions from the Task Force in March. M. Moers had concern about inequities regarding spend down. The spend down is below poverty level for home help. R. Chaney indicated that she wasn't sure of anything that the Task Force could do about this at this time. R. Chaney indicated that it could be put on the list for further study.

Recommendation #3: The Task Force would call upon the state to promptly process Medicaid applications; there is a standard of promptness. A suggestion was made to look at the idea of presumed eligibility. If you made application for Medicaid LTC and the financial eligibility was not made by the standard of promptness you would be presumed eligible for Medicaid and if you were subsequently determined not eligible for Medicaid there would be no recovery by the state from the recipient or the provider. To do this the state would not be able to recover the federal match. M. Udow indicated that if they want to solve the eligibility problem, that it will take more staff and better technology to help this problem. A motion was made that presume eligibility for Medicaid would be determined after a 45-day period from application. J. Mendez seconded the motion. D. Hoyle indicated that rather than supporting this motion he would rather make a motion to put this on the list for further study, asking commission/administration to take a look at this after the Task Force has given chance to work. Otherwise, asking the instead of the state liability without giving the current administration a chance to solve this issue. J. Olszewski indicated that the motion as stated is not consistence with federal law on how presumptive eligibility works. Presumptive eligibility is a specific category under Medicaid and it doesn't allow you to make someone eligible because they didn't meet the time frames. R. Chaney asked the Task Force if this is an issue that should go back to the Executive Committee. R. Carter called the question. By vote 4 were in favor of the motion. There were 13 members who opposed the motion. There were 4 abstentions. D. Hoyle made a motion that this issue needs to put on the list of further study. Senator Cherry indicated that there should be a recommendation for this issue. Putting on the list for further study is not strong enough.

Recommendation #4: The issue of the impact on the people who are affected. M. Cody presented a situation where a person was impacted. S. Steinke suggested that another vote should be taken for consensus. G. Betters clarified what the recommendation is for is that the hospital leave days are to stay intact. For example, if you are in the hospital for 10 days or less the facility will be paid to hold your bed. J. Olszewski asked if there were going to be recommendations for how the department saves money otherwise, because they will be required to come up with those savings. R. Chaney indicated that was the primary issue. R. Chaney suggested that the vote stands and that perhaps funding this should be put on the list for further study.

Discussion: Workgroup G Quality Recommendations: M. Cody presented the quality recommendations. The intent of section 7 of the definition of quality would level the playing field. Make sure that people who remained at home chose to receive LTC services in their home or assisted living facility that they would have access to some assurances of quality and some place that they could make complaints of lack of quality. In doing so, the workgroup called for the creation of a single toll free hotline that would be staffed 24 hours a day, 7 days a week to be staffed by trained individuals who could receive complaints from Medicaid LTC services no matter where the services were being provided. They could route the call to the correct advocacy. This calls for the creation of workgroup to determine if state agencies complaint protocols insure a timely and complete response and monitor for appropriate outcomes. In paragraph 6 & & in the report there is a recommendation that they look viability of LTC settings so that the department charged for responsibility for licensing of LTC settings would promulgate rules within 12 months to establish the process for identifying the facilities which would not be viable absent intervention by the state. J. Mendez asked that there be some language related to language of ethnic groups for the toll free hot line. M. Cody indicated that that was overlooked, but could be added. R. Chaney indicated that she would like to see home and community-based services part of quality issues. M. Cody indicated that 1 through 5 was clearly intended to be reflective of everything that you can call LTC services wherever delivered. R. Chaney clarified that there are four main issues: 1) consumer control and choice; 2) non-English speaking individuals who call in; 3) connecting the PCP to indicators of quality; and 4) emphasis on home and community based services. Can there be language issued within the next week to resolve these issues. M. Cody indicated that he would produce the language needed. The consumer advocate recommendation is that there is an agency that is designated to be a consumer advocate agency. The workgroup tried to blend together the statutory language from the LTC Ombudsman Act and the protection and advocacy system in a way that makes some sense. There is a requirement that the agency would have a physical office in each SPE. D. Hoyle made a motion to accept the recommendation of consumer advocate. M. Cody seconded the motion. A voice vote approved this motion.

Adjourned at 12:30 p.m.

The Task Force re-convened at 1:04 p.m.

Public Comment:

Barbara Hustoles, Adult Services Supervisor for the Ionia/Montcalm District Department of Human Services. She has many concerns with the direction that the Task Force seems to be taking. There needs to be SPE for the clients in Michigan, however the suggestion of 14 SPE doesn't make any sense. The Department of Human Services and the adult services program is ideally set up to be the SPE statewide, this is because they are located in every county and do know all the programs available to clients. While the literature that was covered by the Task Force refers to Home Help program as the low-end services, we in the field are very familiar with complex care issues and have many cases where these tasks are handled. When the Medicaid waiver was first being conceived there was an effort for it to be done by the Adult Services Program because it was a logical fit. It is still a logical fit. The Task Force talks about the number of clients statewide are 60,000; this includes 40,000 home help clients, 10,000 adult community placement clients, and 10,000 waiver clients. Since we already serve 50,000 of the 60,000 for the sake of the continuity of care it makes sense for the program to go to the adult services. Adult services are in all the communities, AFC homes, dealing with nursing homes, and hospital social workers. Have clients that have been with Home Help for decades. If we are looking at PCP, shouldn't this worker-client relationship be taken in account? The Task Force is recommending that there be 798 case managers statewide. Adult Services is half way there with over 350 well trained, degreed, adult services workers. Always used PCP and have always worked for the least restricted setting. Becoming the SPE would allow Adult Services to be in even more situations that are hospitals and nursing homes where possible abuse, neglect, or financial exploitation might occur. Administratively everything is set up to go. A computer program to handle the case load, a chain of command to follow, and a hearings process in place.

Sue Fabien, caregiver of her elderly 83-year old mother. Despite the homecare worker in her mother's situation, she stole blank checks from the house and forged them. After investigating she found out from the homecare agency that this particular person has did this to at least 2 other older adults. She filed a complaint with the City of Royal Oak and was told that blank checks had no value so it would not be investigated. She wrote the Chief of Police and the Mayor of the City to get the police department to investigate this matter. Then she called the Southfield police because this same homecare worker had done the same thing to an older adult in Southfield. The Southfield Police dropped the case for a lack of evidence. This made her very aware of the large gap in the long-term care workforce. Despite criminal background checks by the homecare agency and the area agency does in its over site capacity, this person got through the system and very successfully navigated the system. This particular worker was fired from this homecare agency because the agency knew that she had done this. Because of the lack of evidence the police department dropped it and she went to the next homecare agency with a clean criminal background. There was nothing in the workgroup D report regarding this issue. S. Gire asked Sue for her name, address, and phone number. She indicated that the

Governor will be forming a Task Force on Elderly Abuse and she would like to take a look at the specifics.

John McCready, concerned citizen. He came to the Task Force requesting that the Task Force recommends an investigation and review board of the MiChoice Program and a Responsibility to Improve the Quality of Services. The Michigan Protection and Advocacy Service, the Michigan Poverty Law Program, and the Governor of Michigan collaborated to increase the quantity of services available through the MiChoice program or the Michigan Medicaid Waiver Program. Thanks to the Eager v Engler case, M. Cody, Alison Hirshcel and Governor Granholm, the MiChoice Program now serves many more people. He requested that the Medicaid LTC Task Force recommend that these organizations and individuals become involved in a comparable effort to improve the quality of services provided through the MiChoice Program. A handout of the testimony was given to the Task Force members. A handout was given to the Task Force regarding his testimony.

Discussion: Final Report: J. Hazewinkel presented a draft of the final report. He handed out copies of the draft to the Task Force members. The information received by Wednesday, April 6th was included in the draft presented. The report was emailed to Task Force members on Friday, April 8th. R. Chaney indicated that Monday, April 18th the Task Force would vote on the final report. J. Hazewinkel indicated that he would need notification of any changes no later than close of business on Wednesday, April 13, 2005.

Executive Summary: Summarizes the key recommendations.

Introduction: J. Hazewinkel indicated that the introduction should build the case. D. Hoyle wanted to change to the relatively in line 7 to significantly. J. Mendez asked to change line 2. M. Cody wanted recognition that it is not just a policy issue, but it is legal issue from the result of the Olmstead decision. M. Cody will provide language to include in the report.

Recommendation #1 & #2: PCP & MFP: This recommendation came from the combination of workgroup A & C reports. There was not been many changes since the report was issued. There were many suggestions of grammar corrections and rewording of particular sentences. S. Steinke indicated that the SPE had a recommendation to train state regulators, ombudsman, and PNA early on with PCP guidelines. She asked for it to be added. The Task Force proposed to eliminate lines 22 through 25 and phrase as an action step. S. Steinke will write language. J. Olszewski asked M. Cody about his workgroup recommended putting something about PCP in statue and didn't see it reflected in the recommended actions. M. Cody responded by saying that they did recommend a definition of PCP but a requirement that all planning by the SPE utilize the SPE process. R. Chaney indicated that the ultimate PCP is self-determination of when a person controls his or her own budget. This is missing. Need to have a phrase that states that. S. Steinke asked that SPE must inform all consumers about PCP

facilitation option be added under this recommendation. R. Alcodray-Khalifa and D. Hoyle added that there is adequate information and that it be linguistically. J. Olszewski indicated the strategies and action steps that have been listed previously should create the benchmarks.

MFP: G. Betters indicated line 8 reads “nursing facility enrollment and expenditures are not capped”; they are capped by the 80th percentile in nursing homes. There are many caps. Need to rephrase this sentence. G. Betters will submit the revised language for this issue. J. Olszewski asked to add the spend down recommendation that was discussed previously. R. Carter will rework the language of the conclusion of money-follows-the-person. R. Chaney indicated that the whole paragraph would be rewritten. S. Steinke suggested adding the action steps a sentence that reads MDCH will work develop policies with SPE agencies from stakeholders that will allow the funding streams for consumers. Senator Cherry disagreed because if you get to specific than people will not understand what you are trying to say. T. Czerwinski asked about the “aggregate cap”. M. Cody indicated that he would submit language regarding the definition of aggregate cap and why this is recommended. J. Olszewski indicated that workgroup B didn’t discuss aggregate cap only case-mix. R. Chaney indicated that M. Cody should work on case-mix language.

Recommendation #3: This recommendation is regarding SPE. S. Steinke reminded J. Hazewinkel that instead of using care and supports coordination is now worded supports coordination. J. Olszewski indicated that if she didn’t belong to the Task Force she would have not known what an SPE was. S. Steinke will submit language identifying what a SPE is. S. Steinke indicated that on page 8, line 25 that significant changes had been made to reflect what Barbara Hustoles testified about. She indicated that this was too prescriptive. S. Steinke has a recommended paragraph for that. It would reflect that are no preclusions on who can apply as long as they fulfill the requirements.

J. Olszewski indicated that a revised recommendation to bring before the Task Force regarding the shifted dollars. R. Chaney asked S. Steinke, M. Udow, T. Czerwinski, and J. Olszewski to work on language for this issue.

R. Chaney indicated that Task Force would be brainstorming on barriers and would finish up the rest of the recommendations at the next meeting. The draft will be placed on the website. If the public has feedback on this report, they need to email J. Hazewinkel by Wednesday, April 13, 2005 by 4pm.

Recommendations #4 through #10 will be discussed on April 18th.

R. Chaney asked the Executive Committee to stay after to come up with a time that they can meet this week.

Amy Slonim facilitated the barriers. The barriers are a specific charge from the governor. They are to show how the recommendations would be implemented. The Task Force came up with several barriers for this report. Amy Slonim indicated that if there were any other thoughts that J. Hazewinkel needs to be notified by Wednesday, April 13, 2005 by 2 p.m.

Next meeting date and agenda topics:

The challenge at the next meeting would be to look at how the Task Force is going to address the barriers that they listed.

Public comments on the final report on Friday, April 15, 2005 at the Michigan Public Health Institute. The address and map will one the website.

The next meeting of the Long-Term Care Task Force will be held on April 18, 2005.

A motion to adjourn was made by G. Betters, seconded by S. Gire. The meeting adjourned at 3:35 p.m.